# CHAPTER ONE
# Introduction to Federal Labor Relations

You see it in old movies all the time. After a few days on the job, the new worker in the factory is approached by a rough-hewn labor organizer wearing a cloth cap who tells the new employee that the union representing workers in this factory would be delighted if he would join, and goes on to tell him in indelicate terms what will happen to him if he does not.

It's not like that in federal service. Union representatives don't wear cloth caps, cannot call strikes, and do not intimidate people into joining. In the federal service, labor relations are governed by a different set of principles, many of which are similar to private industry, but are at the same time markedly different. In this introduction, let's take a look at what it means to have a union, the structure of federal labor/management relations, and then the differences between federal and private sector labor relations.

## HOW A UNION PRESENCE CHANGES SUPERVISION

### Without a Union

Where you do not have a union, management enjoys four significant advantages. First, management deals directly with all employees about everything with no intervening party. If you want to talk with your employees about anything—a new organization, safety rules, performance standards—you do it directly without having to involve any outside party. Or if you want to talk with an employee about some conduct deficiencies and the person insists on having a witness or representative there, you have every right to say "no." It's between you and the employee and that's it. Any involvement by any outside party is possible only after the fact—if you fire an employee in the competitive service, he or she could appeal to the Merit Systems Protection Board, but again, this is only after it happens.

Second, all management decisions are unilateral without any solicitation of input from anybody. Now don't get me wrong. As I've said in other places, all good supervisors and managers engage employees in interactive discourse about most job matters, which I've referred to as inter-subjectivity. However, the

simple legality of it is that federal supervisors and managers are not compelled to seek or listen to input from anybody below or outside their chain of command when deciding work issues in a non-unionized environment.

Third, management can act in secrecy. Without a union, management is under no obligation to routinely divulge information about the way it runs the organization. To be sure, it can be compelled to disclose some information under the FOIA and Privacy Acts, or to reveal certain information during legal appeals such as EEO complaints or MSPB appeals. However, absent those mechanisms, the agency can cloak all its actions from external and internal scrutiny. Even if a group of employees got together and asked to see the disciplinary records for a particular branch over the past few years, or all referral lists for a particular job, they would be out of luck.

Last, employees have precious little recourse over matters of dissatisfaction. It is a myth that any federal employee can just walk into any federal court and demand that his desk be moved closer to the window or that her supervisor stop yelling at her when she comes in late. Sure, there are a bunch of appellate mechanisms available to federal employees, but the reality of it is that unless you're a status employee and get fired, demoted, RIF'd, or something heavy like that, there's not a whole lot you can do to challenge management.

## When a Union Is Created

However, when you supervise where a union has been recognized, those four qualities dissipate. First, you will have to start dealing with a third party about some of the matters you previously dealt with directly with employees covered by the union. I say some, but not all, because as we'll see, you will still be dealing directly with unionized employees about many issues. Work assignments, for example, will go directly from supervisors to employees without any union involvement. You'll take disciplinary actions directly without involving the union. Hiring people will also be an exclusive prerogative of management.

However, you will have to deal solely with the union over many matters you previously discussed directly with employees. For example, in resolving grievances, you're not going to be able to just call an employee into your office and work things out. You'll have to deal with the union instead. In soliciting input or giving information about a variety of matters, you'll be dealing directly with the union and not with the employees.

Second, many of the decisions—especially those involving working conditions—will require some degree of negotiation or discussion with the union. When you're setting policies about things like break times, grooming rules, personal phone calls at work, and hundreds of other topics, you'll have to notify and negotiate with the union. Even, as we'll see, when you're exercising

a management right, you may still have to involve the union in working out the details about how exercising your right will affect the employees—what we'll call later, "bargaining about arrangements."

Third, you'll have to lift the veil of secrecy. While the union will not have an unlimited right to see anything it wants, it will now have routine access to information about much of what management does. When it asks to see the disciplinary records for the organization over the past two years, management will have to pull them out—even if there's no grievance or appeal about the issue. If they want to see the promotion records for Electrical Engineers in your department, you'll have to pony up, again even if there is no current grievance or complaint.

Last, employees will now have greater recourse over matters of dissatisfaction. By law, if you have a union you must negotiate a contract, and that contract must contain a grievance article that gives the union the broad right to challenge management actions, and a challenge can even go up to an independent third party who can make a binding decision. Now let's look at the structure of labor relations in the federal service and how this differs from private industry.

## FEDERAL LABOR MANAGEMENT RELATIONS' STRUCTURE

In the private sector, labor management relations is governed by the Wagner Act, called the National Labor Relations Act, and various amendments. All oversight and regulation is done by the National Labor Relations Board (NLRB). The Wagner Act, however, does not apply to agricultural employees or public employees (somebody tell me sometime why they lumped those two together).

Federal unions have been around since the nineteenth century, but until the late 1970s were only allowed by executive order, and labor relations was governed by the Department of Labor. Federal unions gained official statutory status in the late 1970s with the Civil Service Reform Act, which contained a section, similar in many ways to the Wagner Act, creating the framework and rules for labor management relations in the federal government. The law, usually referred to as the Federal Service Labor Management Relations Statute (FSLMRS), is now in Chapter 71 of Title 5 US Code, the title on federal administrative personnel rules. Congress also created the Federal Labor Relations Authority (FLRA) to oversee everything about labor relations in the federal civil service, and to perform functions homologous to those of the NLRB.

Now let's look at some of the significant differences between federal and private sector labor relations.

## Union Shops Versus Voluntary Membership

First and by far the most important difference is voluntary membership in federal unions. In the private sector, it is perfectly legal under the National Labor Relations Act for a company to require union membership as a condition of employment. However, in the federal civil service, union membership is wholly voluntary.

We'll go into the technicalities of what it means to be a bargaining unit employee later, but in the federal service, even if you work in a job that is represented by the union, you do not have to join the union. Yet the union is required by federal labor law to represent you just as diligently as it does union members. This is what creates the dynamic where unions try to prod non-members into joining, the chief reason, of course, being that members pay dues, which are automatically withheld by agencies from paychecks.

## Wages and Most Benefits Non-Bargainable

The second major difference between federal and private sector labor relations is that the biggest issues are off the table. Federal unions cannot, with rare exception, negotiate over wages and economic benefits. Those are primarily set by Congress and the Office of Personnel Management, which means that federal unions cannot bargain over matters such as retirement benefits, holidays, salaries, overtime compensation, sick leave, annual leave, or other financial benefits that their counterparts can in the private sector.

The significance of this is that in the private sector, negotiating wages and financial packages is precisely why unions were formed in the first place. I don't harbor any strong feelings one way or another when it comes to unions. However, many people argue that a union that cannot negotiate wages is not really a union. I'll leave that debate to others, but it does it raise an important point that affects the dynamics of federal labor management relations: federal unions do not have the muscle that their counterparts in private industry do, so they have to expend their energy in other areas and they make the most of what they can.

When we get further into the book, many of you will throw up your hands at the seeming triviality of some of the issues that you'll have to deal with unions about—choosing the color of the carpets in the new office, negotiating over the number of chairs in the break room, or worrying about whether an employee moving to a new office will have a window. However, it is a reality that most of the important topics are excluded from labor-management discourse.

## Striking and Concerted Activity Illegal

Next, federal unions have no right to strike or engage in other concerted activities like slowdowns, work to rule, picketing, sickouts, and all the other organized assaults, messages, and reprisals against management private sector unions engage in. The most federal labor law allows is a low degree of informational picketing in certain situations. This, of course, removes one of the unions' greatest weapons and means that the only way they can seek recourse is through charges of Unfair Labor Practices or grievances against management.

## Management Rights

The last major difference between federal and private sector labor relations is that in the federal sector, management has rights that do not exist in the private sector. The Wagner Act contains no exclusions to the subjects of bargaining and a private company could be compelled to bargain about virtually anything that affects wages, benefits, or the terms and conditions of employment. The only decisions that private sector case law absolutely reserves to management are strategic and survival economic decisions, such as closing certain plants or discontinuing certain product lines.

The only way that a private company could establish management rights would be to bargain them into the contract, which means that it would have to give up something somewhere else. Private companies are indeed compelled to bargain over holiday and vacation pay, performance standards, non-supervisory work by supervisors, subcontracting, workload, union shops, work schedules, company rules, disciplinary actions, bonuses, assignment of duties, new technology, layoffs, and all the other matters federal agencies are precluded from bargaining over.

Federal labor law explicitly reserves various rights for management, which we'll discuss in detail throughout the book. For example, management has an *absolute* right to assign duties to any job on either a permanent or temporary basis, and there's nothing the union can do about it. Similarly, management has an absolute right to contract out and lay people off, and need not negotiate with the union, except over what arrangements it may make for displaced employees.

Federal unions cannot bargain over the economic structure of the federal government or certain matters wholly reserved to management. So, if federal unions cannot bargain wages, economic benefits, job assignment, layoffs, and new technologies, then what's left? What's left are working conditions, a topic we'll elaborate on throughout the remaining chapters.

Now let's look at the most important principles of federal labor relations.